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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,385	10/30/2003	Jason C. Lee	4110-220U1 (378(1))	3292
570	7590	06/16/2004	EXAMINER	
AKIN GUMP STRAUSS HAUER & FELD L.L.P. ONE COMMERCE SQUARE 2005 MARKET STREET, SUITE 2200 PHILADELPHIA, PA 19103-7013			ABDELWAHED, ALI F	
			ART UNIT	PAPER NUMBER
			3712	

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/699,385

Applicant(s)

LEE ET AL.

Examiner

Ali Abdelwahed

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/30/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

Claim 16 is objected to because of the following informalities:

It is suggested that in:

Claim 16, line 2, after "...overlaps..." insert --the--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 20 recite the limitations "the at least one driven wheel" and "the at least one non-driven wheel" in lines 14-15 and 13-14, respectively. There is insufficient antecedent basis for these limitations in the claims.

Claim 11 recites the limitations "the first non-driven wheel" and "the first driven wheel" in lines 1 and 2. There is insufficient antecedent basis for these limitations in the claim.

Claim 12 recites the limitation "the first non-driven wheel" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim(s) 2-10 and 13-19 depend from rejected claim(s) 1 and include all of the limitations of claim(s) 1 thereby rendering these dependent claim(s) indefinite.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A durometer is an instrument for measuring hardness therefore the recitation of "the first non-driven wheel includes a tire having a higher durometer than a durometer of a tire forming a part of the drive wheel" does not clearly describe the characteristics of the tires. This error should also be corrected anywhere found in the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1, 2, 6, 7, 9, and 13 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent No. 6,394,876 B1 to Ishimoto.

Ishimoto discloses a toy vehicle comprising: a chassis (50); an electric power supply supported by the chassis (see column 3, lines 64-67); at least a first drive motor (55) also supported by the chassis and receiving power from the electric power supply (see columns 3 and 4, lines 64-67 and 1-9, respectively); at least a first drive wheel (53) mounted to the chassis to rotate about a wheel axis (see figs. 5, 6), the first drive wheel being operably coupled with at least the first drive motor (see column 4, lines 1-9); at least a first link (30) having a first end pivotally coupled with the chassis (see figs. 5, 6), and a second opposing end, the first link having two operative positions: a first, fully-retracted operating configuration wherein the first link is positioned against the chassis, at least transversely spanning the wheel axis (see fig. 6); and a second, extended operating configuration wherein the first link is pivoted away and extended from the chassis and the wheel axis (see fig. 5); and at least a first non-powered wheel (24) rotatably attached to the second opposing end of the first link (see fig. 5), the toy vehicle being supported on the at least one driven wheel and the at least one non-driven wheel in both the first and second operating configurations of the at least first link (see figs. 5, 6); a wireless control receiver (91) supported by the chassis and configured to receive wireless control signals to selectively control the at least first drive motor (see column 5, lines 49-65); the chassis has a generally rectangular lateral profile in a plane perpendicular to the wheel axis and the at least first link extends around at least two sides of the chassis rectangular profile (see figs. 4-6); and the at least first drive wheel is higher in side elevation than is the chassis (see fig. 5).

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6, 8, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,597,744 to Rehkemper et al.

Rehkemper et al. discloses a toy vehicle comprising: a chassis (14); an electric power supply (84) supported by the chassis (see figs.1-4); at least a first drive motor (48) also supported by the chassis and receiving power from the electric power supply (see columns 3 and 4, lines 40-42 and 39-40, respectively); at least a first drive wheel (38) mounted to the chassis to rotate about a wheel axis (36), the first drive wheel being operably coupled with at least the first drive motor (see figs. 3, 4); at least a first link (12) having a first end pivotally coupled with the chassis (see figs.1, 2), and a second opposing end, the first link having two operative positions: a first, fully-retracted operating configuration wherein the first link is positioned against the chassis, at least transversely spanning the wheel axis (see fig. 2); and a second, extended operating configuration wherein the first link is pivoted away and extended from the chassis and the wheel axis (see fig.1); and at least a first non-powered wheel (22) rotatably attached to the second opposing end of the first link (see fig.1), the toy vehicle being supported on the at least one driven wheel and the at least one non-driven wheel in both the first and second operating configurations of the at least first link (see figs.1, 2); the chassis has a generally rectangular lateral profile in a plane perpendicular to the wheel axis and the at least first link extends around at least two sides of the chassis rectangular profile (see fig. 3); and torque acting on the chassis resulting from driving the first drive wheel

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can cause the first link to pivot with respect to the chassis (see figs.1, 2, and respective portions of the specification).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishimoto in view of U.S. Patent No. 6,540,583 B1 to Hoeting et al.

Ishimoto discloses the claimed invention except for the first non-driven wheel having a coefficient of friction less than a coefficient of friction of the first driven wheel, and the first drive wheel having a diameter larger than a diameter of the first non-driven wheel. However, Hoeting et al. teaches a toy vehicle comprising the aforementioned limitations (see fig.1); as seen in figure 1, the first driven wheels (22, 24) have tread on the tires to provide extra friction to aid in propelling the vehicle along a support surface, thereby teaching the first driven wheels having a coefficient of friction greater than the first non-driven wheels. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the toy vehicle of Ishimoto, in view of Hoeting et al., such that it would provide the toy vehicle of Ishimoto with the aforementioned limitations for the purpose of enhancing the maneuverability of the toy vehicle.

Claims 9, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rehkemper et al. in view of U.S. Patent No. 6,540,583 B1 to Hoeting et al.

Rehkemper et al. discloses the claimed invention except for the first drive wheel including a hollow, air-filled tire, the first non-driven wheel having a coefficient of friction less than a coefficient of friction of the first driven wheel, and the first drive wheel having a diameter larger than a diameter of the first non-driven wheel. However, Hoeting et al. teaches a toy vehicle comprising the aforementioned limitations (see fig.1); as seen in figure 1, the first driven wheels (22, 24) have tread on the tires to provide extra friction to aid in propelling the vehicle along a support surface, thereby teaching the first driven wheels having a coefficient of friction greater than the first non-driven wheels. It is also very well known in the remote control toy car art to utilize hollow air-filled tires. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the toy vehicle of Rehkemper et al., in view of Hoeting et al., such that it would provide the toy vehicle of Rehkemper et al. with the aforementioned limitations for the purpose of enhancing the maneuverability of the toy vehicle.

Allowable Subject Matter

Claims 3-5 and 14-19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Claim 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ali Abdelwahed whose telephone number is (703) 305-3311. The examiner can normally be reached Monday through Friday from 9:00 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703) 308-1745.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

AA
06/11/2004

A handwritten signature in black ink, appearing to read 'D. Banks', with a long horizontal line extending to the right.

**DERRIS H. BANKS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700**